

(c) *Time and manner of making election*—(1) *In general.* The election provided by paragraph (a) of this section must have been made on or before December 31, 1962, by means of a letter addressed to the Director of Internal Service, Washington, DC 20225, which clearly stated that the company elects to comply with the provisions of section 1247. The letter must have been signed by an officer of the foreign investment company who was a resident of the United States and who was duly authorized to act on behalf of the company.

(2) *Information furnished.* The following information must have been submitted in connection with the election:

(i) The name, address, and employer identification number, if any, and the taxable year of the company;

(ii) The principal place of business of the company;

(iii) The date and the country under whose laws the company was incorporated;

(iv) The date of filing with the Securities and Exchange Commission, and the file number, of Form N-8A;

(v) The names and addresses of all of the company's directors and officers and of any custodian or agent of the company located in the United States; and

(vi) The name and address of the person (or persons) in the United States having custody of the books of account, records, and other documents of the company, and the location of such books, records, and other documents if different from such address.

(3) *Time information furnished.* (i) If a foreign investment company was registered with the Securities and Exchange Commission on the date of election, all the information required by subparagraph (2) of this paragraph must have been submitted with the election.

(ii) If a foreign investment company made its election before it was so registered, the information required by subparagraph (2) (i), (ii), and (iii) of this paragraph must have been submitted with the election and the information required by subparagraph (2) (iv), (v), and (vi) of this paragraph must have been submitted within 60 days fol-

lowing receipt by the Securities and Exchange Commission of Form N-8A.

(d) *Termination of election*—(1) *General.* Section 1247(b) provides that the election of a foreign investment company under section 1247(a) shall permanently terminate as of the close of the taxable year preceding its first taxable year in which any of the following occurs:

(i) The company fails to comply with the provisions of section 1247(a)(1) (A), (B), or (C), unless it is shown that such failure is due to reasonable cause and not due to willful neglect;

(ii) The company is a foreign personal holding company as defined in section 552; or

(iii) The company ceases to be a registered foreign investment company which is described in paragraph (b) of this section. A company ceases to be a registered company, for example, as of the time the Securities and Exchange Commission revokes its order permitting registration of the company.

(2) *Reasonable cause.* Whether a failure by a foreign investment company to comply with the provisions of section 1247(a)(1) (A), (B), or (C) is due to reasonable cause and not due to willful neglect depends on whether the company exercised ordinary business care and prudence. For example, if in determining its taxable income under section 1247(a) the company relied in good faith upon estimates and opinions of independent certified public accountants or other experts which are also used for purposes of its financial statements filed with the Securities and Exchange Commission under the Investment Company Act of 1940, such reliance would constitute reasonable cause for purposes of this paragraph. In such a case, the company's election under section 1247(a) for the taxable year would not be terminated nor would the company be required to make an additional distribution for such taxable year in order to comply with the provisions of section 1247(a)(1)(A).

[T.D. 6798, 30 FR 1174, Feb. 4, 1965]

§ 1.1247-2 Computation and distribution of taxable income.

(a) *In general.* Taxable income of a foreign investment company means taxable income as defined in section

63(a), computed without regard to subchapter N, chapter 1 of the Code, and in accordance with the following rules:

(1) There shall be excluded the excess, if any, of the company's net long-term capital gain over the net short-term capital loss. See § 1.1247-3 for the manner of computing such excess.

(2) The deduction provided in section 172 (relating to net operating losses) shall not be allowed.

(3) Except for the deduction provided in section 248 (relating to organizational expenditures), the special deductions provided for corporations in part VIII (sections 241 and following), subchapter B, chapter 1 of the Code shall not be allowed.

(4) In computing the amount of the deduction allowed under section 164 there shall be included taxes paid or accrued during the taxable year which are imposed by the United States or by the country under the laws of which the company is created or organized. See, however, § 1.1247-4.

(b) *Election to distribute taxable income after close of taxable year.* A company may elect under section 1247(a)(2)(B), in respect of taxable income for a taxable year, to treat a distribution made not later than 2 months and 15 days after the close of such taxable year as a distribution made during such taxable year of such taxable income. The company shall make the election by attaching to the information return required by paragraph (c)(1) of § 1.1247-5 for such taxable year a statement setting forth the amount of each distribution (or portion thereof) to which the election applies and the date of each such distribution. The election shall be irrevocable after the expiration of the time for filing such information return. The distribution (or portion thereof) to which the election applies shall be considered as paid out of the earnings and profits of the taxable year for which such election is made, and not out of the earnings and profits of the taxable year in which the distribution is actually made. A distribution to which this paragraph applies shall be includible in the gross income of a shareholder of the foreign investment company for his taxable year in which received or accrued.

[T.D. 6798, 30 FR 1175, Feb. 4, 1965]

§ 1.1247-3 Treatment of capital gains.

(a) *Treatment by the company*—(1) *In general.* If an election to distribute income currently pursuant to section 1247(a) is in effect for a taxable year of a foreign investment company, the company shall designate (in the manner described in subparagraph (3) of this paragraph) to each shareholder his pro rata amount of the excess of the net long-term capital gain over the net short-term capital loss for the company's taxable year, and the portion thereof which is being distributed to each such shareholder. See section 1247(a)(1)(B). Except as provided in subparagraph (2) of this paragraph, the company shall compute such excess (hereinafter referred to as *excess capital gains*) as if such company were a domestic corporation, but without regard to subchapter N, chapter 1 of the Code. See paragraph (d) of § 1.1247-1 for rules relating to termination of election under section 1247(a) for failure to properly compute or to properly designate excess capital gains. A company may make an irrevocable election (by notifying its shareholders as provided in subparagraph (3) of this paragraph) to distribute, on or before the 45th day following the close of its taxable year, all or a portion of the excess capital gains and have any such distribution treated as if made during such taxable year.

(2) *Rules for computing capital gains and losses.* Generally, the adjusted basis of property held by a foreign investment company shall be its cost adjusted in accordance with the applicable provisions of the Code. However, in respect of property held by a foreign investment company on the first day of the first taxable year for which the election under section 1247(a) applies, the amounts shown on such day in the permanent books of account, records, and other documents of the company shall, at the option of the company, be accepted as the adjusted basis of such property, if on such day such books, records, and other documents were being maintained in the manner prescribed by regulations under section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-30). In computing capital gains and losses of a foreign investment company under section 1247, the